

**REMARKS****Double Patenting**

Claims 1-21, 30-40, 45-52, and 54-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 14, 25-27, 29, and 36 of co-pending U.S. Patent Application Serial No. 10/238,829.

Applicants note that the claims in co-pending U.S. Patent Application Serial No. 10/238,829 have been amended. Applicants submit that the amended claims in the co-pending application are patentable over claims in the present application. Accordingly, Applicants request the Examiner to withdraw the provisional rejection under the judicially-created doctrine of double patenting.

**Rejections under 35 U.S.C. § 103**

Claims 1-4, 6, 7, 9, 14-16, 18-21, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 200/0196958 by Halteren (hereinafter “Halteren”) in view of U.S. Patent No. 6,704,423 to Anderson et al. (hereinafter “Anderson”).

Claims 5 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of U.S. Patent Application Publication No. 2003/0002700 by Fretz et al. (hereinafter “Fretz”).

Claims 10-13 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of U.S. Patent No. 2,930,856 to Toht et al. (hereinafter “Toht”).

Claims 22-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of U.S. Patent No. 6,560,468 to Boesen (hereinafter “Boesen”).

Claims 31-35, 39, and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson.

Claims 36-38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of Toht.

Claims 41-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of Boesen.

Claims 45, 46, 48-52, 54-57, and 60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson.

Claim 47 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of Toht.

Claim 53 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Halteren in view of Anderson in further view of Boesen.

All of the rejections under 35 U.S.C. § 103(a) rely upon Halteren. Halteren has a filing date of June 24, 2002, an earliest priority date of June 25, 2001, and a publication date of December 26, 2002. The filing date of the present application is August 10, 2001. Because the publication date of Halteren is after the filing date of the present application, Halteren is only available for a rejection pursuant to U.S.C. § 102(e).

However, Applicants reduced the invention (as recited in the pending claims) to practice before the earliest priority date (June 25, 2001) of Halteren. Applicants have submitted a declaration pursuant to 37 C.F.R. § 1.131 to establish a date of reduction to practice before the earliest priority date of Halteren. A CAD drawing supporting the declaration has also been submitted.

Accordingly, Applicants submit that the pending claims are patentable over all of the combination of references involving Halteren.

Official Notice

The Examiner has also taken official notice stating that “hole and prong” arrangements, “sound reduction circuitry,” “magnetic induction coils,” “Bluetooth” wireless functionality, “multi-dimensional” BTE housings, and “multiple ear molds” are well known in the art. Applicants respectfully traverse the conclusion that the claimed subject matter would have been obvious to one of ordinary skill in the art. To enable, Applicants to fully respond, under Rule 37 C.F.R. § 1.104(d)(2), the Examiner is hereby requested to provide and make of record an affidavit setting forth his data as specifically as possible for the assertion. Alternatively, under M.P.E.P. § 2144.03, the Examiner is hereby requested to cite a reference in support of the assertion.

Conclusion

In view of the above amendment, Applicants believe the pending application is in condition for allowance. Applicants believe no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 06-2380, under Order No. 59184/P002US/10026564 from which the undersigned is authorized to draw.

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Respectfully submitted,



Christopher S. L. Crawford  
Registration No.: 51,586  
FULBRIGHT & JAWORSKI L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201-2784  
(214) 855-8000  
(214) 855-8200 (Fax)